

the assessment of civil penalties and costs under subpart I of this part.

Subpart I—Trespass

§ 166.800 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural lands. These provisions also apply to Indian agricultural land managed under an agricultural lease or permit under part 162 of this title.

§ 166.801 What is the BIA's trespass policy?

We will:

- (a) Investigate accidental, willful, and/or incidental trespass on Indian agricultural land;
- (b) Respond to alleged trespass in a prompt, efficient manner;
- (c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.
- (d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 166.802 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) Nothing in this subpart shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

NOTIFICATION

§ 166.803 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, within five business days, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any

known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

- (1) The basis for the trespass determination;
- (2) A legal description of where the trespass occurred;
- (3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);
- (4) Corrective actions that must be taken;
- (5) Time frames for taking the corrective actions;
- (6) Potential consequences and penalties for failure to take corrective action; and
- (7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by us.

(b) If we determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

§ 166.804 What can I do if I receive a trespass notice?

If you receive a trespass notice, you will within the time frame specified in the notice:

- (a) Comply with the ordered corrective actions; or
- (b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

§ 166.805 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

ACTIONS

§ 166.806 What actions does the BIA take against trespassers?

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812 of this subpart.

§ 166.807 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

§ 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the unauthorized livestock or property owner or representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricul-

tural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

§ 166.809 What happens after my unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

§ 166.810 How do I redeem my impounded livestock or other property?

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812 of this subpart and completing all corrective actions identified by us under § 166.804 of this subpart.

§ 166.811 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.804 and § 166.812 of this subpart, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the